

FCC MAIL SECTION

APR 4 3 09 PM '96

DISPATCH

Before the
FEDERAL COMMUNICATIONS COMMISSION DA 96-465
Washington, D.C. 20554

In the Matter of)	MM Docket No. 96-69
)	
KXSA Radio, Inc.)	
)	
Licensee of Station KGPL(AM))	
Dermott, Arkansas)	
)	
Order to Show Cause Why the)	
License for Station KGPL(AM))	
Dermott, Arkansas Should Not)	
be Revoked)	

**ORDER TO SHOW CAUSE
AND
HEARING DESIGNATION ORDER**

Adopted: March 28, 1996

Released: April 1, 1996

By the Assistant Chief, Audio Services Division:

1. The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him for consideration: (a) a license held by KXSA Radio, Inc. for Station KGPL(AM), Dermott, Arkansas, and (b) the results of an investigation into KGPL(AM)'s silent status.¹

2. The Commission's records indicate that KGPL(AM) has been off the air since December 29, 1993, and that the special temporary authority permitting the station to remain silent expired September 5, 1995.² Thus, KGPL(AM) has been off-air for over two years and presently is not authorized to remain silent. Consequently, KXSA Radio, Inc. is in

¹ The Mass Media Bureau has been delegated authority to issue and release Show Cause Orders in cases involving silent broadcast stations. See Debrine Communications, Inc., 7 FCC Rcd 2118 (1992).

² KGPL(AM)'s license expires on June 1, 1996 (File No. BR-890117UK, granted July 19, 1989). A renewal application was required to be filed by February 1, 1996. Commission records indicate however, that an application for renewal of KGPL(AM)'s license has not been filed.

apparent violation of Sections 73.1740(a)(4)³ and 73.1750⁴ of the Commission's Rules.

3. Accordingly, IT IS ORDERED, That pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, KXSA Radio, Inc. IS DIRECTED TO SHOW CAUSE why the license for Station KGPL(AM) should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether KXSA Radio, Inc. has the capability and intent to expeditiously resume broadcast operations of KGPL(AM) consistent with the Commission's Rules.

(b) To determine whether KXSA Radio, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether KXSA Radio, Inc. is qualified to be and remain the licensee of Station KGPL(AM).

³ Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control the licensee make it impossible to comply with the allowed period, an informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

⁴ Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

4. IT IS FURTHER ORDERED, That, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the MASS MEDIA BUREAU.

5. IT IS FURTHER ORDERED, That to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.91(c) of the Commission's Rules, SHALL FILE with the Commission within thirty (30) days of the receipt of this Order a WRITTEN APPEARANCE stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file a written appearance within the time specified, or within thirty (30) days of receipt of this Order the licensee files a written statement expressly waiving its right to a hearing, the licensee's right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event the right to a hearing is waived, the Presiding Judge, or the Chief Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding and CERTIFY this case to the Commission in the regular course of business, and an appropriate Order shall be entered.⁵

6. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order revoking the license for KGPL(AM), Dermott, Arkansas, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the licensee in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful and repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of

⁵ The Mass Media Bureau has been delegated authority to issue Revocation Orders in cases involving silent broadcast stations. See Radio Northwest Broadcasting Company, 4 FCC Rcd 596, n.3 (1989).

action. Since the practice of including such forfeiture notice is a routine procedure, such inclusion here should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

FEDERAL COMMUNICATIONS COMMISSION

**Stuart B. Bedell
Assistant Chief, Audio Services Division
Mass Media Bureau**